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TAGS: [KTIP](#) [PREL](#) [KCRM](#) [KWMN](#) [PHUM](#) [SMIG](#) [MY](#)  
SUBJECT: MALAYSIA: TIP TIER 3 ACTION PLAN (2009-2010)

REF: A. A: 2009 STATE 66260  
[1](#)B. B: 2007 STATE 150188

[1](#)1. (U) This is an action cable: please see paragraphs 4-8.

[1](#)2. (U) The 2009 Trafficking in Persons (TIP) Report carries policy and programmatic implications for those countries listed on Tier 3 (i.e. those countries whose governments do not fully comply with the minimum standards for the elimination of trafficking and are not making significant efforts to do so).

[1](#)3. (SBU) The following statement is for Post's information only. The Department prepared a &short-term8 action plan for some Tier 3 countries with recommended steps that, if taken, would constitute significant efforts and qualify for reassessment to Tier 2 Watch List prior to the Presidential determination on sanctions. The Government of Malaysia was provided with a &short-term8 action plan (see ref A), however it did not complete the mandatory steps in the action plan within 75 days of the TIP Report's release (by August 31, 2009) and thus Malaysia remains on Tier 3. On September 14, 2009, President Obama issued a determination that waived full sanctions for Malaysia, because he determined that doing so would promote the purposes of the TVPA or was otherwise in the national interest of the United States. (Note: the term "sanctions" is used herein to describe sanctions defined in the TVPA, including provision for directed voting in international financial institutions (IFIs)).

[1](#)4. (U) Begin action request: Drawing from points in para 7, Post is requested to approach appropriate host government officials to highlight the United States' strong commitment to continue to work with the Government of Malaysia to help strengthen its efforts to combat and prevent trafficking in persons (TIP) and to assist victims. Post is requested to convey the recommendations in para 8 as a non-paper and draw from the talking points in para 7 to explain to the host government the need for prompt action on these recommendations. The &Implementation Guidelines8 referenced in the action plan notes are contained in reftel [1](#)B. These guidelines provide guidance to posts on how the Minimum Standards of the Trafficking Victims Protection Act, as amended, (TVPA) are implemented, and have been cleared by regional bureaus.

[1](#)5. (U) Action request continued: Post is further requested to emphasize to the Government of Malaysia that these recommendations are designed to help remedy the specific shortcomings identified in the 2009 TIP Report. Sustained and significant anti-trafficking efforts by the government throughout the reporting period (March 1, 2009 through March 31, 2010) year will be the basis for determining next year's tier placement.

[1](#)6. (U) Action request continued: Please keep in mind the TIP Report measures host government efforts. In order for anti-trafficking activities financed or conducted principally by parties outside the government to be considered for tier placement purposes, Post needs to demonstrate a concrete role

or tangible value-added by a host government in such activities carried out by NGOs, international organizations, or posts.

17. (SBU) Background Points:

Begin talking points:

-- The Obama Administration views the fight against human trafficking, both at home and abroad, as a critical piece of our foreign policy agenda. We are committed to making progress on this issue in the months ahead by working closely with partners in every country.

-- Malaysia was placed on Tier 3 in this year's Report because it does not fully comply with the minimum standards for the elimination of trafficking in persons, as set forth in the U.S. law (the Trafficking Victims Protection Act, as amended), nor is it making significant efforts to comply with those standards.

--While the government took initial actions under the anti-trafficking law against sex trafficking, it has yet to fully address the broad range of trafficking in persons issues in Malaysia, particularly labor trafficking.

--Credible allegations of involvement of Malaysian immigration officials in trafficking Burmese refugees are a continuing concern. The July 2009 arrest of officials alleged to be involved in such trafficking was a welcome step. Prosecution of those involved would send a powerful signal that the GOM is determined to eliminate trafficking.

-- Ambassador CdeBaca's visit at the end of August was a useful start to our dialogue on TIP issues. We were pleased to hear at that time some of the specific actions the GOM is considering taking to combat trafficking, including plans to announce in mid-September a comprehensive TIP National Action Plan. We encourage the GOM to follow-up on these actions and commitments in the very near future.

-- We provide a non-paper which contains several recommended actions to tackle specific shortcomings highlighted in the 2009 TIP Report. These are consistent with the short-term action plan we presented in June 2009. We will reconsider Malaysia's tier placement when we conduct our annual assessment for the 2009-2010 reporting period next spring. Significant actions in these areas can lead to a more favorable tier placement; conversely, failure to make significant efforts to address these issues mentioned above may cause Malaysia to remain on Tier 3.

-- We welcome the Government of Malaysia's comments on these recommendations and look forward to continued partnership and engagement with your government in addressing the problem of trafficking in persons.

-- The USG is prepared to provide technical assistance and training appropriate for law enforcement, immigration, prosecutors, judges, other government officials, and RELA members on the effective handling of both sex and labor trafficking cases. For example, we are now scheduling a visit by a federal prosecutor, FBI Agent, and victim counseling specialist, all experienced in U.S. anti-trafficking measures, to train a select group of their Malaysian counterparts on how such cases are, to include victim counseling services, are addressed in the United States. The training is scheduled to take place before the end of November 2009, and we are awaiting a response from the Malaysian Attorney Generals, Chambers on possible dates for the training to take place. We look forward to feedback from the GOM on the types of TIP training and assistance that might be of most value.

End talking points.

18. (SBU) Begin Action Plan/ Non-Paper:

During the next six months, the USG looks forward to partnering with the Government of Malaysia to promote improvements in combating trafficking in persons. We also encourage the Government of Malaysia to work with foreign diplomatic missions directly affected, including Bangladesh, Indonesia, Thailand, and Vietnam.

Based on the findings of the June 2009 U.S. TIP Report and the subsequent discussions with the Malaysian government, the U.S. recommends that the Government of Malaysia take the following significant steps through March 2010 which would receive positive consideration in the 2010 TIP report and tier ranking:

1A. Take strong law enforcement actions under the Trafficking in Persons Act, particularly relating to cases of labor trafficking. Such actions could include arresting suspected traffickers and those involved in fraudulent labor recruitment and the exploitation of forced labor, and prosecuting them under the Trafficking in Persons Act, and conducting raids to free suspected victims who are held against their will by employers and labor agents (Note: Raids should be carefully planned to ensure the safety of all involved, free trafficking victims while minimizing harm to others, and include post-rescue care arranged for victims). Action in this regard should include an increase in the number of arrests and prosecutions leading to convictions and sentences for both sex and labor trafficking. Imposed sentences should involve significant jail time.

1B. Complete investigations into reports of Burmese refugees trafficked to the border of Thailand and arrest and prosecute suspected complicit Malaysian officials and other traffickers using the Trafficking in Persons Act.

1C. Develop and implement procedures to identify trafficking victims of both sex and labor trafficking among vulnerable groups, such as undocumented refugees, migrant laborers, individuals detained for immigration violations, and foreign women and children arrested for prostitution, and refer them to available protective services.

1D. Re-examine existing MOUs with source countries to incorporate victim protection and revoke passport or travel document confiscation.

1E. Issue and publicize a National Action Plan on combating trafficking, highlighting in the public announcement that combating TIP is a priority to GOM.

1F. Expand the training of law enforcement, immigration, prosecutors, judges, other government officials, and RELA members on the effective handling of both sex and labor trafficking cases and on the use of the 2007 comprehensive trafficking law. Training should emphasize the protection of witnesses and victims, regardless of their legal status in Malaysia.

1G. Conduct a broad public awareness campaign to inform employers of the rights of foreign workers, regardless of their legal status, emphasizing obligations toward foreign domestic workers and other laborers, and highlighting the consequences of abusing such workers. Increase efforts to raise awareness of the consequences of trafficking for commercial sexual exploitation. Consider distributing leaflets and placing billboards/posters at Malaysian embassies overseas, airports, and other transportation hubs that describe how to recognize trafficking.

End Action Plan/ Non-Paper.

Begin Annex to Non-Paper

Annex

-- Per the U.S. State Department's Implementation Guidelines

for the Trafficking Victims Protection Act Minimum Standards, victims should not be expected to self-identify due to possible feelings of shame or fear of retribution from their traffickers or punishment by the government, and should go beyond the mere checking of an individual's papers.

-- Proactive measures for victim identification are particularly necessary among groups vulnerable to trafficking, such as foreigners being held for deportation and women arrested for prostitution, and it is most appropriate in areas where these potential victims may interface with the government, including detention centers, deportation centers, and police stations.

-- Procedures to identify trafficking victims of both sex and labor trafficking should:

¶1. Articulate a policy promoting proactive screening for victims, and training personnel in victim identification methods or assigning already trained personnel to high-risk areas.

¶2. Include the use of social workers and other professionals trained specifically in trafficking victim identification to interview those in vulnerable groups for evidence of trafficking.

¶3. Include measures that ensure that identified victims of trafficking, including victims of labor trafficking and victims without legal status in the country, are not prosecuted, detained, or otherwise penalized for acts committed as a result of being trafficked, such as violation of immigration provisions or prostitution.

¶4. Include a standard referral provisions that ensure victims receive access to victim services, such as primary health care, counseling and shelter. Provide access to counselors who are trained to deal with the multiple psychological and overwhelming emotional issues associated with being a victim of trafficking. Victims should be encouraged to recount their trafficking experience to trained social counselors and law enforcement. If these investigations are unduly constrained by existing law, the government should explore avenues for exceptions to allow for an appropriately thorough investigation conducted at a reasonable pace with minimal pressure. Establishing a standard referral procedure to transfer identified victims to NGO victim services is recommended.

¶9. (U) Post's continued assistance and efforts in the fight to eliminate trafficking in persons are greatly appreciated.  
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